FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 502/2006

Appeal Application No. Writ petition	District : of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 2, 2007.

Heard Shri Amol Mardikar, the learned counsel for the appellant.

This second appeal is preferred against the judgment passed by the trial and appellate Courts whereby the claim of the respondents for partition and separate possession of their share in field Survey No. 338, was granted. According to the plaintiffs/ respondents, the property originally belonged to one Sadhu Bambole who was the ancestor of the plaintiffs and the defendant. According to the plaintiffs, after the death of Sadhu, the property devolved on the plaintiffs and the defendant equally and, therefore, the plaintiffs sought decree for partition and separate possession of their half share in the suit property. The defendant raised a plea to the effect that the defendant had become the owner of the suit property in view of the fact that he had paid taxes for the house property and was in occupation of the same since more than 30 years. It was also a plea of the defendant that the suit

of the plaintiffs was barred by limitation in view of the applicability of the provisions of Article 113 of the Limitation Act, 1963.

Trial and the appellate Courts categorically recorded a finding that the plaintiffs had proved their ownership to half share in the field Survey No. 338. The Courts also recorded a clear finding of fact that the defendant had not proved that he had become owner of the suit property in view of the payment of tax and in view of the fact that he had been occupying the same since long. The defendant had merely pleaded in the written statement that he had become the owner of the property in view of his long standing possession.

Findings recorded by the trial and the appellate Courts are clear findings of fact and do not give rise to any substantial question of law. In any case, the suit was not barred by limitation as provisions of Article 113 of the Limitation Act, 1963 do not apply to the facts of the case as the present suit was filed by the plaintiffs for partition and separate possession.

For the aforesaid reasons, second appeal is dismissed with no order as to costs.

JUDGE

RMP